IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 29 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH TAX

Versus

BOMBAY CONDUCTORS & ELECTRICALLTD.

Appearance:

1. WEALTH TAX REFERENCE No. 29 of 1989

MR MANISH R BHATT for Petitioner No. 1

MR TANVISH U BHATT for Petitioner No. 1

NOTICE NOT RECD BACK for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/06/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, following

question of law is referred to this Court for its opinion:-

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in coming to the conclusion that the assessee is entitled to exemption u/s. 40(3)(vi) of the Finance Act, 1983 for the residential property on the ground that the same was used for guest house and business premise ?"

2. In the present case, the assessee is a Company which owns a residential property which was valued at Rs.4,40,087/-. During the course of the assessment proceedings, the assessee had contended that the said property was being used for the purpose of business as a guest house and, therefore, it should not be included in the net wealth of the assessee. The Wealth-tax Officer did not accept this contention and included the value thereof in the computation of the net wealth of the assessee. On appeal, the Commissioner of Wealth-tax (Appeals) had upheld the order of the Wealth-tax Officer and on further appeal by the assessee before the Tribunal, the Tribunal has observed that in the income-tax proceedings, the department itself has exempted treating the property in question as being used for business purposes. The Tribunal has also referred to the order of the Income-tax Officer passed under Section 143(3) in the case of the assessee Company wherein it was clearly stated that the department had taken the stand that the premises were business premises and the Tribunal has, therefore, come to the conclusion that when the property was used for business purposes, the value thereof could not be included in the net wealth of the assessee and as such the exemption was available to the assessee under Section 40(3)(vi) of the Finance Act, 1983.

On the above facts, the above question was referred to this Court for its opinion.

3. Since the property in question was held to be used for business in the Income-tax proceedings by the Income-tax Officer himself, the same property could not have been treated differently in the wealth-tax proceedings. If the property is being used for business purposes and it is accepted to be so in the income-tax proceedings, Similar treatment is to be given in the wealth-tax proceedings and as such in the wealth-tax proceedings the value thereof cannot be included in the net wealth of the assessee as it is specifically exempt

under Section 40(3)(vi) of the Finance Act, 1983.

4. In view of the above, we are of the opinion that the Tribunal has rightly excluded the value of the property from the net wealth of the assessee. We, therefore, answer the above question in the affirmative i.e. in favour of the assessee and against the revenue.

The reference is accordingly disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-